

Ordinance of the City of Jersey City, N.J.

File No. Ord. 23-049
Agenda No. 3.3 (1st Reading)
Agenda No. 4.3 (2nd Reading and Final Passage)



AN ORDINANCE AMENDING CHAPTER 160 (FEES AND CHARGES) AND CHAPTER 316 (TOBACCO PRODUCTS AND SMOKING DEVICES) TO ESTABLISH LICENSING REQUIREMENTS FOR SMOKE SHOPS AND TOBACCO STORES

COUNCIL AS A WHOLE offered and moved adoption of the following ordinance:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JERSEY CITY AS FOLLOWS:

A. Chapter 316 (TOBACCO PRODUCTS AND SMOKING DEVICES) is hereby amended as follows.

Chapter 316

TOBACCO PRODUCTS AND SMOKING DEVICES

Legislative findings

Smoking harms health. Tobacco use has significant and proven ill effects on health. There is a lack of scientific support for the idea of any kind of safe smoking. Smoking of all kinds, including by vaping, e-cigarettes, pipes, cigars, cigarettes, and smoking devices increases health risks. Furthermore, businesses offering such products for sale have a responsibility to follow laws regulating the sale and consumption of such products. Businesses advertising these products are throughout Jersey City. Some of these businesses have been associated with complaints, including the sale of illegal products, noise, and exposing workers and members of the public to smoke in violation of the New Jersey Smoke-Free Air Act.

§ 316-1. Definitions.

As used in this chapter:

CHARACTERIZING FLAVOR — A distinguishable flavor, taste, or aroma, including, but not limited to, any fruit, candy, chocolate, vanilla, honey, cocoa, wintergreen, dessert, alcoholic beverage, herb or spice flavoring, that is imparted prior to or during consumption by an electronic smoking device, tobacco product, or other related product, including electronic liquid, or any smoke, aerosol, or vapor emanating from that device or product. An electronic smoking device, any cartridge, or other component of the device or other related product, including liquid nicotine, shall be deemed to have a characterizing flavor if the device, cartridge, component, or related product is advertised or marketed as having or producing any such distinguishable flavor, taste or aroma, or is distinguishable by an ordinary consumer either prior to, or during, its consumption. No tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

FLAVORED SMOKING PRODUCT means any product marketed or otherwise intended for inhalation consumption by a person which has a Characterizing Flavor.

FLAVORED TOBACCO PRODUCT means any tobacco product that contains a taste or smell other than the taste or smell of tobacco and which is distinguishable by an ordinary consumer either prior to, or during, its consumption, including, but not limited to, any taste or smell similar to chocolate, cocoa, fruit, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice.

NEW JERSEY SMOKE-FREE AIR ACT shall mean New Jersey Public Law 2005, Chapter 383, N.J.S.A. 26:3D-55 et seq.

APPROVED AS TO LEGAL FORM

Business Administrator

Corporation Counsel

An Ordinance amending Chapter 160 (Fees and Charges) and Chapter 316 (Tobacco Products and Smoking Devices) to establish licensing requirements for Smoke Shops and Tobacco Stores

PERSON shall mean any natural person, partnership, firm, joint-stock company, corporation, or other legal entity, including an employee of a legal entity.

SMOKING DEVICE means any device or product that ignites, combusts, or vaporizes a tobacco product or other substance for inhalation by direct contact with or close proximity to the smoking device, including, but not limited to, electronic cigarettes (e-cigarettes), electronic cigars, (e-cigars), electronic pipes (e-pipes), vape pens, or electronic hookahs (e-hookahs). "Smoking devices" shall include any component or accessory of such a device, whether sold separately or not, including any filters and liquids used in such devices, but does not include any similar devices approved for sale by the U.S. Food and Drug Administration for medicinal purposes as those items are defined in the Federal Food, Drug and Cosmetic Act, nor does it include any device whose principal use is to impart a scent to the atmosphere, without direct contact or close proximity to the device.

SMOKING shall mean the heating, ignition, combustion, or vaporization of any tobacco product or smoking product.

SMOKING PARAPHERNALIA shall mean any paraphernalia, equipment, device, or instrument other than a lighter or matches that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of a tobacco product or smoking product as defined herein.

SMOKING PRODUCT shall mean any product intended or marketed for inhalation consumption by means of smoking paraphernalia, except tobacco products as herein defined. The term "smoking product" does not include drugs, devices or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

SMOKE SHOP shall mean any premises that displays, sells, distributes, delivers, offers, furnishes, or markets smoking products or smoking paraphernalia and meets one or more of the following conditions: 1) has visible exterior signage that references smoking, or any tobacco product, smoking product, or smoking paraphernalia, 2) has visible interior signage that references smoking, or any tobacco product, smoking product, or smoking paraphernalia, or has displays of smoking products or smoking paraphernalia measuring a total of ten or more linear feet, or 3) has retail sales of smoking products or smoking paraphernalia of more than \$1,000 in any calendar month of the year.

~~SMOKE SHOP and TOBACCO STORE shall mean any premises that derives 50 percent or more of its gross revenue on a quarterly basis from the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes, or tobacco as an ancillary sale shall not be defined as a smoke shop or tobacco store and shall not be subject to the requirements of this chapter.~~

TOBACCO PARAPHERNALIA shall mean any paraphernalia, equipment, device, or instrument other than a lighter or matches that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined herein. Tobacco Paraphernalia shall include but is not limited to pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes, electronic smoking devices, vaporizers, and hookahs.

TOBACCO PRODUCT shall mean any product containing, made of, or derived from tobacco or containing nicotine, that is intended for ~~inhalation~~ human consumption. The term "tobacco product" does not include drugs, devices or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

TOBACCO STORE shall mean any premises that displays, sells, distributes, delivers, offers, furnishes, or markets tobacco, tobacco products, other smoking products, or smoking paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes, or tobacco as an ancillary sale shall not be defined as a smoke shop or tobacco store and shall not be subject to the requirements of this chapter.

An Ordinance amending Chapter 160 (Fees and Charges) and Chapter 316 (Tobacco Products and Smoking Devices) to establish licensing requirements for Smoke Shops and Tobacco Stores

It shall be unlawful for any person to:

A. ~~Sell, or offer for sale, or distribute, any electronic smoking device which delivers a flavored tobacco product, including but not limited to any flavored liquid, cartridge, or component intended for the delivery to the person of a flavored tobacco product by way of inhalation from an electronic smoking device.~~ Sell, or offer for sale, or distribute, any electronic smoking device which delivers a Flavored Smoking Product or sell, offer for sale, or distribute, any Flavored Smoking Product.

There shall be a rebuttable presumption that a tobacco product is a Flavored Smoking Product~~flavored tobacco product~~ if the manufacturer of said product, or any person, agent or employee acting in the course of their agency or employment with the manufacturer, has made any statement or claim or disseminated any advertisement or notice directed at consumers or to the general public regarding said product, which indicates that said tobacco product has or produces a taste or smell other than tobacco. Examples of such statement, claim, advertisement or notice shall include, but shall not be limited to images on the product's labeling or packaging which are used to convey that the product has or produces a taste or smell other than tobacco.

B. Sell or offer to sell any cigarette or Tobacco Product ~~tobacco product~~ other than in the sealed, original packaging provided by the manufacturer nor distribute cigarettes or products containing tobacco or non-tobacco cigarette products for any commercial purpose other than at full retail price.

C. Permit or allow any smoking in violation of the New Jersey Smoke-Free Air Act.

§ 316-3. Severability.

[Added 12-4-2019 by Ord. No. 19-158]

If any portion of this Chapter, or its application to any circumstances, is held invalid, the remaining portions shall be considered severable, and shall be given effect to the maximum extent possible.

An Ordinance amending Chapter 160 (Fees and Charges) and Chapter 316 (Tobacco Products and Smoking Devices) to establish licensing requirements for Smoke Shops and Tobacco Stores

[Section 316-4 repealed and replaced with the following]

A. Licensing Requirements; issuance; enforcement.

1. All Tobacco Stores and Smoke Shops shall obtain a license prior to engaging in retail distribution of Tobacco Products, Smoking Products, or Smoking Paraphernalia. Upon the issuance of a license, such use may thereafter be continued for a period not to exceed one year, at which time the Smoke Shop or Tobacco Store shall renew its license.
2. The Director of the Division of Commerce is empowered to issue a maximum of forty-five total Smoke Shop and Tobacco Store licenses, and may suspend or revoke Smoke Shop and Tobacco Store licenses pursuant to this Chapter.
3. All Smoke Shops and Tobacco Stores currently in operation at the time this ordinance takes effect shall be required to submit an application for the appropriate Smoke Shop or Tobacco Store license within sixty days of the effective date of this ordinance, and to obtain such license within one hundred eighty of the effective date of this ordinance.
4. Smoke Shops and Tobacco stores currently in operation at the time this ordinance takes effect whose application for a Smoke Shop or Tobacco Store license is received within sixty days of the effective date of this ordinance may receive a license in excess of the maximum license limit.

B. License application.

1. An applicant for Smoke Shop or Tobacco Store license shall file an application with the issuing authority upon forms provided by the license issuing authority.
2. The application shall be made under oath and shall contain the following:
 - a. The applicant's trade name and telephone number;
 - b. The address of the applicant's place of business and its mailing address, if different;
 - c. The names, residences and contact information of all persons financially interested in the business, and the nature and extent of this interest;
 - d. If the applicant is incorporated, the names, residences and citizenship of the officers, directors and/or stockholders;
 - e. A statement as to whether any person with a financial interest in the business has been convicted of any criminal or quasi-criminal offense, and if so, the date and place of such conviction and the nature of the offense; and
 - f. Any other information which the issuing authority finds reasonably necessary to enforce this Chapter.

C. Licenses shall not be issued prior to the issuance of all required approvals from the Division of Zoning and Construction Code Official to operate on the applicant's premises.

D. The Division of Commerce may consider the applicant's prior history of violations of this Chapter in its decision to grant or deny a license.

E. License fees; expiration

1. The annual license fee for a Smoke Shop or Tobacco Store shall be as provided by Chapter 160, Fees and Charges. Such license shall run for a period of one year, commencing August 1 and ending July 31 of the following year.

An Ordinance amending Chapter 160 (Fees and Charges) and Chapter 316 (Tobacco Products and Smoking Devices) to establish licensing requirements for Smoke Shops and Tobacco Stores

2. If at any time of application for a license less than six months of the current year have expired, the applicant shall be required to pay the full fee for the year. If six months or more shall have expired, the applicant shall be required to pay half of the annual fee.

F. The Department of Housing, Economic Development, and Commerce's Division of Commerce, the Department of Public Safety's Division of Quality of Life and Division of Police are individually and severally empowered to enforce the provisions of this article. The respective enforcing official may, in his or her discretion, provide a warning for a first-time offense.

An Ordinance amending Chapter 160 (Fees and Charges) and Chapter 316 (Tobacco Products and Smoking Devices) to establish licensing requirements for Smoke Shops and Tobacco Stores

- A. ~~The penalty for violating this article shall be as provided in Chapter 1, General Provisions, § 1-25. In addition to the penalties provided in Chapter 1, General Provisions, § 1-25, any applicable license to sell tobacco products or food items may be suspended for a first or second violation of § 316-4. A license may be revoked for a third or subsequent violation of § 316-4.~~
- B. In addition to the penalties provided in Chapter 1, General Provisions, § 1-25, any license issued by the Division of Commerce may be revoked or suspended after hearing upon at least 10 days' notice served upon the licensee where:
1. The licensee violates any provision of this Chapter; or
 2. Any Person issued a license has been convicted of a crime relating to the illegal sale of tobacco, cannabis, or adult use cannabinoids in connection with the licensed premises; or
 3. Any licensee has violated any of the provisions in Chapter 84 of the City Code; or
 4. Any licensee has been found responsible for any acts constituting a breach of the peace or a public nuisance in connection with the operation of the licensed premises; or
 5. Where the Director finds the operation of the licensed premises detrimental to the health, safety and welfare of the people of the city.
- C. Notice of a violation shall contain the specific provisions of State or Local law which have been violated and the specific acts which shall constitute the violation. A hearing shall be conducted following procedures established by the Division of Commerce.
- D. Any applicable license to sell Tobacco Products, Smoking Products, or Smoking Paraphernalia may be suspended for a period of time not more than one year for violation of § 316-2 or § 316-4. A license may be revoked, and no future license issued, for a subsequent violation of § 316-2 or § 316-4.
- E. Any license issued by the Department of Health and Human Services to a Person who violates any provision of this Chapter or has been found to be in violation of this Chapter may be revoked or suspended after hearing upon at least 10 days' notice served upon the licensee. Said notice shall contain the specific provision of this Chapter which has been violated and the specifications which shall constitute the violation. A hearing shall be conducted following procedures established by the Department of Health and Human Services.
- F. Any Person whose Tobacco Store or Smoke Shop license has been revoked shall not be qualified to receive a new license or have said license restored.
- G. Any licensee whose license has been revoked or suspended shall have a right to appeal such revocation or suspension to a court of competent jurisdiction in accordance with the rules of the Courts of the State of New Jersey.

CHAPTER 160 – FEES AND CHARGES

§ 160-1. Fee schedule established.

[No changes to A. through OO].

PP. Chapter 316, TOBACCO PRODUCTS AND SMOKING DEVICES

The annual license fee for Tobacco Stores and Smokes Shops are as follows:

1. Tobacco Store - \$600
2. Smoke Shop - \$1,000

NOTE: All new material is underlined words ~~struck through~~ are omitted. For purposes of advertising only, new matter is **boldface** and repealed by *italics*.

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RECORD OF COUNCIL VOTE ON INTRODUCTION – May 24 2023						
RIDLEY	AYE	SALEH	AYE	DEGISE	AYE	8-0-1
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	ABSTAIN	
BOGGIANO	AYE	GILMORE	AYE	WATTERMAN, PRES	AYE	

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING – Jun 14 2023						
RIDLEY	AYE	SALEH	AYE	DEGISE	AYE	9-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	AYE	
BOGGIANO	AYE	GILMORE	AYE	WATTERMAN, PRES.	AYE	

SPEAKERS:

Jeanne Daly

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY –						
RIDLEY		SALEH		DEGISE		
PRINZ-AREY		SOLOMON		RIVERA		
BOGGIANO		GILMORE		WATTERMAN, PRES.		

RECORD OF FINAL COUNCIL VOTE – Jun 14 2023						
RIDLEY	AYE	SALEH	AYE	DEGISE	AYE	8-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	ABSTAIN	
BOGGIANO	AYE	GILMORE	AYE	WATTERMAN, PRES.	AYE	

Adopted on first reading of the Council of Jersey City, N.J. on **May 24 2023**

Adopted on second and final reading after hearing on **Jun 14 2023**

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on Jun 14 2023



City Clerk



Joyce E. Watterman, President of Council
Approved: Jun 14 2023



Steven M. Fulop, Mayor
Date to Mayor: Jun 15 2023
Approved: Jun 15 2023

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FACT SHEET -

This summary sheet is to be attached to the front of any ordinance that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the ordinance.

Project Manager

Maynard Woodson, Director of Licenses	2015475843	MWoodson@jcnj.org
Department	Department of Housing, Economic Development, and Commerce	
Division	Division of Commerce	

Note: Project Manager must be available by phone during agenda meeting (Wednesday prior to council meeting @ 1:00 p.m.)

Meeting	Regular Meeting of Municipal Council - May 24 2023
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Purpose

Ordinance regarding policy regulations for the existing and recently approved smoke shops, tobacco stores, and cannabis dispensaries.

Cost (Identify all sources and amounts)

0

Contract term (include all)

Approved by
Maynard Woodson, Director of Licenses
Annisia Cialone, HEDC Director
Ray Reddington, Attorney
John Metro, Business Administrator

Status:
Approved - May 03 2023
Approved - May 03 2023
Approved - May 03 2023
Approved - May 17 2023